IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8013 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)

Versus

MAHMAD RAFIK KALUBHAI DECD THRO HIS MOTHER - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR PRABHAKAR UPADYAY for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 24/06/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated 15.10.1999 passed by the Labour Court, Ahmedabad in Reference (LCIDAT) No.44 of 1997, whereby the said

reference was allowed.

2.0 The respondent-deceased was working as a Conductor with the petitioner. It is the case of the petitioner that the respondent had unauthorizedly remained absent from duty with effect from 02.07.1991, and therefore, Notices were issued to him to resume duty immediately. Since the respondent did not resume the duty, charge sheet was issued on 19.10.1991. Departmental inquiry was held against him. In the said departmental inquiry, the respondent neither filed his reply nor attended the inquiry. Since the charge of unauthorised absenteeism was proved against the respondent, a penalty of stoppage of two increments with future effect was imposed on the respondent.

2.1 It is the case of the petitioner that the respondent continued to remain absent from duty, and, ultimately, approached the Assistant Labour Commissioner by way of filing a case being Case No.3249 of 1992 alleging that he was wrongly dismissed from the service. The matter was subsequently referred to the Labour Court, Ahmedabad and was numbered as Reference LCIDAT No.44 of 1997. The Labour Court, Ahmedabad by impugned order allowed the said Reference. Hence, this petition.

3.0 Mr. H S Munshaw learned advocate for the petitioner has submitted that the respondent was never dismissed from the service and that he had voluntarily remained absent from duty, and therefore, the penalty of stoppage of two increments with future effect was imposed on the respondent. Learned advocate has submitted that the Labour Court has committed serious error in awarding back wages to the respondent for the period from 02.07.1991 to 30.11.1994, since the deceased employee had voluntarily remained absent from duty, though several notices were served on him.

4.0 I have heard learned counsel for the parties. From the documents placed on record, it is clear that the deceased-respondent was never dismissed from the service and that only a penalty of stoppage of two increments with future effect was imposed on him. Moreover, in spite of being served with several notices, the petitioner himself had opted

to not resume his duties. Hence, the Labour Court ought not to have granted back wages to the respondent. However, since the respondent has expired, his legal heirs are entitled for all the retirement dues in view of the fact that deceased-respondent was never dismissed from the service. Therefore, the legal heirs of the deceased-respondent will be entitled for all the retirement dues of the respondent as if the deceased-respondent was in service as on 30/11/1994.

5.0 In above view of the matter, this petition is allowed. The impugned order of the Labour Court as regards directing the petitioner - Transport Service to make payment of back wages to the deceased-respondent for the period from 02.07.1991 to 30.11.1994 is quashed and set aside. It is directed that if the legal heirs of the deceased-respondent have not received the retirement benefits as aforesaid, pursuant to the directions issued by this Court by order dated 16.11.2000, the same shall be paid by the petitioner to the legal heirs of the deceased-respondent, within a period of two months from today. Direct service permitted. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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